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10/633,936

08/04/2003

Tristam W. Himmele

4947

7590

06/17/2004

Clifford Kraft  
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Naperville, IL 60540

EXAMINER

STULTZ, JESSICA T

ART UNIT

PAPER NUMBER

2873

DATE MAILED: 06/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/633,936

Applicant(s)

HIMMELE, TRISTAM W.

Examiner

Jessica T Stultz

Art Unit

2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-18 is/are allowed.
- 6) ☒ Claim(s) 1-4, 9-10 and 19-20 is/are rejected.
- 7) ☒ Claim(s) 5-8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1103 and 0304</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 10, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Goldstein et al.

Regarding claim 1, Goldstein et al discloses a sports viewing assembly comprising (Column 1, lines 15-22 and Column 5, lines 23-33, wherein the viewing assembly can be used to view sporting events): a head support for holding the assembly on a person's head (Column 7, line 58-Column 8, line 64, wherein the head support is the cap "2", Figure 10); a binocular assembly attached to the head support (Column 7, line 58-Column 8, line 64, wherein the binocular assembly is objective lens "8" and eye lens "10", Figure 10) the binocular assembly allowing viewing an event from a distance (Column 1, lines 15-22); and a pivot hinge on the head support for raising and lowering the binocular assembly vertically to adjust to a user's desired viewing position (Column 8, lines 43-54, wherein the pivot hinge is "82" pivots the optical system "8" and "10" vertically, Figure 10).

Regarding claim 10, it is inherent from Goldstein et al that the sports viewing assembly be supplied in a plurality of sizes, this being reasonably based upon the binocular assembly being used in a various different applications including on a visor, military helmets, medical system, etc (Column 1, lines 10-60 and Column 13, lines 41-49).

Regarding claim 19, Goldstein et al discloses a system for comfortable viewing of sporting evenings including (Column 1, lines 15-22 and Column 5, lines 23-33, wherein the viewing assembly can be used to view sporting events): an adjustable headstrap coupled to an optical means (Column 12, line 40-Column 13, line 40, wherein the headstrap includes cords "212" and "214" and the objective lens "8" is connected to the visor "200" and therefore the headstrap, Figure 21); the optical means being adjustable to fit a user's eyes (Column 6, lines 43-51 and Column 8, line 66-Column 9, line 6, wherein the objective lens "8" is adjustable to suit the user's needs, Figure 10 and 21) and pivotable to pivot upward and downward to adjust to a user's desired viewing position (Column 8, lines 43-54, wherein the pivot hinge is "82" pivots the optical system "8" and "10" vertically, Figure 10).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 9, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldstein et al in view of Beller et al.

Regarding claims 2, 9, and 20, Goldstein et al discloses a sports viewing assembly as disclosed above, but does not specifically disclose that assembly include a radio, i.e. a means for receiving radio signals, or a camera. Beller et al teaches of a visor including a radio, i.e. a means for receiving radio signals (Column 4, lines 39-57, wherein the antenna "17" is the radio, Figure 1) for the purpose of providing audio communication with the user and the remote terminal

Art Unit: 2873

(Column 4, line 39-Column 5, line 7), and a camera (Column 3, lines 42-51, wherein the camera is “15”, Figure 1) for the purpose of providing wireless visual communication from the user to the remote terminal (Column 3, lines 42-51). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made for the sports viewing assembly of Goldstein to further include a radio, i.e. a means for receiving radio signals, or a camera Beller et al teaches of a visor including a radio, i.e. a means for receiving radio signals for the purpose of providing audio communication with the user and the remote terminal, and a camera for the purpose of providing wireless visual communication from the user to the remote terminal.

Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldstein et al in view of Desimore.

Regarding claims 3-4, Goldstein et al discloses a sports viewing assembly as disclosed above, but does not specifically disclose that assembly include earmuffs and at least one earphone. Desimore teaches of a helmet including earmuffs and an earphone for the purpose of receiving radio communication from a remote source (Column 2, lines 6-34, wherein the helmet “11” contains earmuffs “24” and speakers “32”, Figures 1-5). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made for the sports viewing assembly of Goldstein et al to further include earmuffs and at least one earphone since Desimore teaches of a helmet including earmuffs and an earphone for the purpose of receiving radio communication from a remote source.

***Reasons for Allowance***

Claims 5-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 11-18 are allowed.

The following is an examiner's statement of reasons for allowable subject matter: none of the prior art alone or in combination disclose or teach of the claimed combination of limitations to warrant a rejection under 35 USC 102 or 103.

Regarding claims 5-8, none of the prior art alone or in combination disclose or teach of a sports viewing assembly including a head support and a binocular assembly and a pivot hinge, specifically including a laser pointer, a rangefinder, a satellite radio, or a scanner.

Regarding independent claim 11, none of the prior art alone or in combination disclose or teach of a sports viewing assembly including an adjustable head support and a telescopic device including a radio, specifically including the radio attached to the telescopic device and at least one earphone removably attached to the radio.

### ***Conclusion***

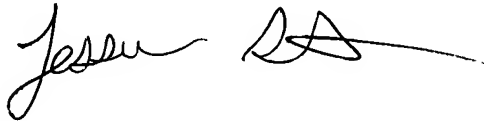
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Vogt et al and Jewel are cited as being some similar structure to the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica T Stultz whose telephone number is (571) 272-2339. The examiner can normally be reached on M-F 8-4:30.

Art Unit: 2873

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Epps can be reached on 571-272-2328. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jessica Stultz  
Patent Examiner  
AU 2873  
June 9, 2004



**JORDAN SCHWARTZ**  
**PRIMARY EXAMINER**